

STATE OF MICHIGAN
COURT OF APPEALS

GABRIEL S. ORZAME, M.D.,

Plaintiff-Appellant,

v

PAUL A. TAGLIA, L.A. WHITE, and TAGLIA
FETTE DUNKE PASSARO & KAHNE, PC,

Defendants-Appellees.

UNPUBLISHED

August 12, 2003

No. 238098

Berrien Circuit Court

LC No. 01-003514-NI

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We reverse.

Defendants had provided legal representation to plaintiff in 1994 regarding tax planning issues. In 1995, plaintiff was charged with numerous criminal charges arising from his operation of a medical clinic in Berrien County, Michigan. Plaintiff and defendants executed a retainer agreement to provide representation regarding the criminal charges.¹ Following plea negotiations by defendants, plaintiff pleaded nolo contendere to a violation of MCL 750.492a(1)(b), reckless falsification of a medical record, on January 20, 1998. On March 10, 1998, disciplinary proceedings were commenced by the Michigan Board of Medicine, and a final order of revocation of plaintiff's license to practice medicine was issued on October 26, 1999.

On January 19, 2001, plaintiff filed a complaint alleging legal malpractice against defendants. Plaintiff alleged that he was concerned about the impact any plea agreement would

¹ The tax planning case was given the file number 6321.01. The criminal matter was given the designation 6321.02. While defendants assert that a retainer agreement was not executed with respect to the licensing matter, the affidavit of defendant Taglia provides that the insurance and licensure matter was given the designation ".03." The licensing matter began after an administrative complaint was filed against plaintiff by the State of Michigan for disciplinary proceedings before the Michigan Board of Medicine.

have on his license to practice medicine. It was also alleged that the prosecutor gave plaintiff the option of choosing the charge that would serve as the basis of the plea agreement. After discussing the issue with defendants, plaintiff was advised that the charge to which he plead would not result in mandatory revocation. Rather, he would be subjected to graduated discipline with the opportunity to plead his case before the disciplinary board. Plaintiff further alleged that defendants agreed to represent him in the proceeding before the State Board of Medicine. The Board issued a decision requiring mandatory revocation. Thereafter, defendants advised plaintiff not to appeal the board decision.²

Defendants moved for summary disposition of the complaint, alleging that dismissal was warranted based on the statute of limitations. Specifically, it was alleged that defendants' representation extended to the criminal charges as evidenced by the retainer agreement. Defendants further alleged that the last date of service rendered to plaintiff "relating to the matters out of which the claim of malpractice" arose was June 24 1998. In support of summary disposition, defendants submitted an affidavit by defendant Taglia regarding the last date of service and billing records from file number 6321.02. The trial court granted defendants' motion for summary disposition.³

Plaintiff alleges that the trial court erred in concluding that the original complaint was barred by the statute of limitations. We agree. Our review of the grant or denial of summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Whether a claim is barred by the statute of limitations presents a question of law for the court when there is no factual dispute and reasonable minds could not differ regarding the legal effect of those facts. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999).

A legal malpractice claim must be brought within two years of the date the attorney discontinues serving the plaintiff or within six months of plaintiff's discovery of the existence of the claim. MCL 600.5838(1), (2); *K73 Corp v Stancati*, 174 Mich App 225, 228; 435 NW2d 433

² These factual allegations were set forth in plaintiff's affidavit filed with his brief in opposition to defendants' motion for summary disposition.

³ After granting defendants' motion for summary disposition, the trial court granted plaintiff's request to amend his complaint. The amended complaint focused on the representation during the disciplinary proceeding and alleged breach of promise by defendants regarding the discipline that would be imposed. The trial court granted defendants' motion for summary disposition of the amended complaint. Plaintiff also appeals the trial court's ruling regarding the second motion for summary disposition. A court is not bound by the plaintiff's label of his cause of action because, to do so, would exalt form over substance. *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). The amended complaint is merely a restatement of a claim of legal malpractice that focused on the alleged licensing representation by defendants, but characterized the acts as breach of promise. Accordingly, the dismissal of the amended complaint was proper. *Johnston, supra*. However, the trial court erred in dismissing the original complaint alleging legal malpractice based on the statute of limitations, and therefore, the original complaint is reinstated.

(1988). Plaintiff may utilize the provision that provides the longer period within which to file the complaint. *Id.* An attorney discontinues servicing the client when relieved of the obligation by the client or the court or when a specific legal service for which he was retained is performed. *Nugent v Weed*, 183 Mich App 791, 796; 455 NW2d 409 (1990). The statute of limitations period may be extended where there is continuing representation by an attorney. *Maddox v Burlingame*, 205 Mich App 446, 451; 517 NW2d 816 (1994). When legal services are performed in a series of discrete events, the proper inquiry is whether the new activity occurs pursuant to a current, as opposed to a former, attorney-client relationship. *Bauer v Ferriby & Houston, PC*, 235 Mich App 536, 539; 599 NW2d 493 (1999).

In *Maddox, supra*, this Court concluded that the defendant's acts constituted continuing representation. The defendant attorney consulted with the plaintiffs regarding the sale of a franchised business in September 1986. When the purchasers ceased making payments under the purchase agreement in 1987, the defendant revised the sale agreement to accommodate the financial difficulties. After further noncompliance by the purchasers, the defendant sent a letter in March 1988, on behalf of the plaintiffs demanding immediate payment. *Id.* at 447-448.

The plaintiffs learned that there was a problem with the sale and contacted the defendant on August 15, 1988, alleging that the defendant had committed legal malpractice. As a result of the phone call, the defendant spoke to the plaintiffs' Florida attorney and performed research regarding Florida's Uniform Commercial Code (UCC). On August 14, 1990, the plaintiffs filed their legal malpractice case against the defendant, alleging that the defendant continued to advise the plaintiffs regarding the sale of the franchise, as evidenced by an invoice the defendant sent to the plaintiffs for performing legal research regarding Florida's UCC. *Id.* at 448. This Court held that the defendant's acts, including the preparation of legal research and billing plaintiffs for the recent services rendered, constituted continuing representation following the business sale of 1986. *Id.* at 450-451.

Similarly in the present case, it was known that the resolution of the criminal charges would have an impact on disciplinary proceedings involving plaintiff's licensing. Consequently, defendants counseled plaintiff regarding the entire process. Defendants did not present documentary evidence to dispute the allegation that representation continued during the administrative licensing proceedings, despite the lack of billing records for this type of action. Based on the factual disparity, summary disposition based on the statute of limitations was improper. *Jackson, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood